

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

November 26, 2002

GSBCA 15904-RELO

In the Matter of DEBORAH F. GARRETT

Deborah F. Garrett, Carencro, LA, Claimant.

Randy D. Florent, Assistant District Counsel, New Orleans District, United States Army Corps of Engineers, New Orleans, LA, appearing for Department of the Army.

PARKER, Board Judge.

Background

When Deborah F. Garrett's husband was transferred from New Orleans, Louisiana, to Lafayette, Louisiana, she requested that her employer, the United States Army Corps of Engineers, send her on a long-term developmental training assignment in Lafayette. In her request, Ms. Garrett told the agency that she would not require per diem for the assignment because her permanent residence was going to change from New Orleans to Lafayette on or before September 1998.

Ms. Garrett's request was approved and, effective October 1998, she was detailed to the Corps' Lafayette office until February 21, 1999. During this time, Ms. Garrett commuted to work from an apartment that her husband had rented in Lafayette in August 1998. She returned to New Orleans from time to time to check the house the couple still owned there until it was sold in May 1999.

When the detail ended on February 21, 1999, Ms. Garrett's official duty station was changed, for one day, on paper, back to New Orleans, until the detail was renewed for a period ending on April 24, 1999. On April 24, when the detail ended, Ms. Garrett's official duty station was again changed on paper back to New Orleans. Ms. Garrett was eventually selected for a permanent position and was permanently reassigned to the Lafayette office effective May 9, 1999. The official "Notification of Personnel Action" states that the "action was at employee's request."

Ms. Garrett's subsequent claims for permanent change of station (PCS) costs in connection with her permanent reassignment, and for per diem while she was on the

temporary detail, were denied. The Corps reasoned that Ms. Garrett was ineligible for these costs because, at all relevant times, her permanent residence was in Lafayette, not New Orleans. Ms. Garrett has asked the Board to review that decision.

Discussion

Permanent Change of Station

When an employee is transferred from one permanent duty station to another, the transfer usually benefits both the Government and the employee. For the purpose of determining relocation benefits, however, the transfer must be characterized as for the principal advantage of one or the other; it is either "in the interest of the Government" or "primarily for the convenience or benefit of an employee." If the primary beneficiary is the Government, the employee is entitled to receive (subject to regulatory constraints) certain benefits. These include expenses of transportation of the employee, his family, and his household goods; real estate transaction expenses; and a miscellaneous expense allowance. The employee may at the agency's discretion receive other benefits, including temporary quarters subsistence expenses (TQSE). If the primary beneficiary is the employee, on the other hand, none of these expenses -- not even transportation of persons and property -- may be paid from Government funds. 5 U.S.C. §§ 5724(a)(1), (2), (h); 5724a(a), (c), (d), (f) (2000); Steven G. Lovejoy, GSBCA 15826-RELO (Oct. 3, 2002); Riyoji Funai, GSBCA 15452-RELO, 01-1 BCA ¶ 31,342.

Whether a particular transfer is in the interest of the Government or primarily for the convenience or benefit of an employee is a discretionary determination to be made by the agency, and we will not overturn the agency's decision unless it is arbitrary, capricious, or clearly erroneous under the facts of the case. Funai. Here, the agency reasonably decided that Ms. Garrett's transfer from New Orleans to Lafayette was primarily for her benefit, not the Government's. The notation on the official Notification of Personnel Action that the reassignment was "at employee's request" is obviously true and reflects the agency's desire to assist Ms. Garrett in finding work in the same city in which both she and her husband already resided. Under these circumstances, Ms. Garrett is not entitled to permanent change of station benefits.

Temporary Duty

The Corps denied Ms. Garrett's claim for per diem expenses incurred during her long-term training assignment in Lafayette on the basis that Ms. Garrett's permanent residence had changed from New Orleans to Lafayette prior to her TDY assignment, and the parties have argued whether Ms. Garrett did indeed move permanently to Lafayette. We need not decide the question of Ms. Garrett's residence at the time of the assignment, however, because the right to be paid TDY allowances depends on the location of an employee's "official station," not his or her permanent residence. The federal Travel Regulation (FTR), which governs travel and relocation matters for Federal civilian employees, including civilian employees of the Department of Defense, provides as follows:

When am I eligible for an allowance (per diem or actual expense)?

When:

- (a) You perform official travel away from your official station, or other areas defined by your agency;
- (b) You incur per diem expenses while performing official travel; and
- (c) You are in a travel status for more than 12 hours.

41 CFR 301-11.1 (1998).

An employee's "official station" is "the location of the employee's . . . permanent work assignment," not his or her permanent residence. 41 CFR 300-3.1. The question is, therefore: Where was Ms. Garrett's permanent work assignment during the time she was in training in Lafayette? As discussed below, and notwithstanding the agency's paper reassignments, we find that Ms. Garrett's permanent work assignment was in New Orleans, not Lafayette.

Generally, an employee's permanent work assignment does not change as a result of a temporary duty assignment. If it did, the concept of a "temporary" assignment would make no sense. There is one exception to that rule, however. If an employee is otherwise eligible for payment of TDY allowances, and the temporary duty is expected to last between six and thirty months, an agency may authorize a temporary change of station (TCS). 41 CFR 302-1.200 -211. If a TCS is authorized, the employee's "official station" is changed temporarily to the location of the long-term temporary assignment. Id. 302-1.212.

An agency may not authorize a TCS, however, without paying certain allowances to the temporarily transferred employee. The agency is required to pay for, among other things, the employee's and his or her family's travel, including per diem, to the new station, transportation and temporary storage of the employee's household goods, a miscellaneous expense allowance, and transportation of a privately-owned vehicle. 41 CFR 302-1.213. In addition, the agency may pay for a house-hunting trip and temporary quarters subsistence expenses. Id. 302-1.214.

The Corps of Engineers could have, but did not, authorize a TCS for Ms. Garrett's temporary assignment in Lafayette. Thus, because a TCS is the only method of which we are aware for changing an employee's official station during a temporary assignment, Ms. Garrett's official station remained, at least for purposes of determining her right to TDY allowances, in New Orleans. Absent a TCS, the "paper transfers" back and forth between New Orleans and Lafayette were irrelevant to Ms. Garrett's TDY-related entitlements.

With very limited exceptions, employees who perform travel away from their official duty stations are entitled to TDY allowances. The FTR provides as follows with regard to allowances for TDY assignments:

Must my agency pay an allowance (either a per diem allowance or actual expense)?

Yes, unless:

- (a) You perform travel to a training event under the Government Employees Training Act (5 U.S.C. 4101-4118), and you agree not to be paid per diem expenses; or
- (b) You perform pre-employment interview travel, and the interviewing agency does not authorize payment of per diem expenses.

41 CFR 301-11.3.

Obviously, Ms. Garrett did not perform pre-employment interview travel. Thus, unless Ms. Garrett's training assignment in Lafayette can be considered a training event under the Government Employees Training Act (GETA), the FTR says that her agency "must" pay a per diem allowance or actual expense reimbursement.¹

¹ The Joint Travel Regulations (JTR), which implement the FTR for civilian employees of the Department of Defense, state:

Employees won't be directed to perform official travel at their own expense or at rates of allowances and amounts of reimbursement inconsistent with the provisions contained in this Volume.

JTR C1050-B (Oct. 1, 1998). However,

[w]hile the policy in par. C1050-B applies with regard to expenses incurred in connection with travel in the interest of DOD, there may be individual situations when exceptions are permitted. Such a situation may be when an employee agrees to pay [his or her] own expenses if travel at Government expense isn't authorized, for attendance at a meeting of a technical, professional, scientific, or other similar organization. It is a matter of administrative determination as to whether the employee in such circumstances is to be carried in a duty or leave status. If it is determined the employee is in a duty status, a TDY travel order shall be issued. The travel order includes appropriate statements indicating that attendance is in the interest of the DOD but the travel is at no expense to the Government and that no per diem or other reimbursement is authorized. The travel order also indicates the travel is at the employees' request and no accounting citation is involved.

JTR C6250. Because Ms. Garrett's TDY assignment does not appear to come within one of the JTR exceptions, we need not decide whether the JTR guidance is consistent with the governing FTR rule.

The Corps of Engineers has submitted a sworn declaration from the personnel officer for the New Orleans District, informing us that Ms. Garrett's training in Lafayette was not established pursuant to GETA. Accordingly, the GETA exception in the FTR does not apply and Ms. Garrett is entitled by regulation to a per diem allowance or actual expense reimbursement.

We recognize that, in sending Ms. Garrett for training in Lafayette, the Corps was assisting her in finding work in the same city to which her husband had been transferred. Nevertheless, an employee's right to TDY allowances is determined by statute and regulation, not by contractual agreement. Because the applicable regulation entitles Ms. Garrett to certain TDY allowances, she is entitled to claim them. The agency should calculate the appropriate TDY allowances and pay in accordance with those calculations.

ROBERT W. PARKER
Board Judge